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IN THE
Supreme Court of the United States

DAVID KING, ET AL.,
Petitioners,
v.
SYLVIA BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

AMICI CURIAE BRIEF OF THE AMERICAN CANCER SOCIETY, AMERICAN CANCER SOCIETY CANCER ACTION NETWORK, AMERICAN DIABETES ASSOCIATION, AMERICAN HEART ASSOCIATION, AND NATIONAL MULTIPLE SCLEROSIS SOCIETY SUPPORTING RESPONDENTS URGING AFFIRMANCE

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TABLE OF AUTHORITIES

CASES Page(s)

Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837 (1984) 7, 8, 24

King v. Burwell, 759 F.3d 358 (4th Cir. 2014) 7, 8, 12, 24

King v. Sebelius, 997 F. Supp. 2d 415 (E.D. Va. 2014)..... 23

Nat'l Fed'n of Indep. Bus. v. Sebelius, --- U.S. ---, 132 S. Ct. 2566 (2012) .....*passim*

OTHER AUTHORITIES

Am. Cancer Soc'y, *Cancer Facts and Figures 2015* (2015), *available at* http://www.cancer.org/acs/groups/content/@editorial/documents/document/acspc-044552.pdf..... 9

Am. Cancer Soc'y Cancer Action Network, *A National Poll: Facing Cancer in the Health Care System* (2010), *available at* http://www.acscan.org/healthcare/cancerpoll 14, 16

Am. Diabetes Ass'n, *Economic Costs of Diabetes in the U.S. in 2012*, 36 Diabetes Care 1033 (Supp. 2013), *available at* http://care.diabetesjournals.org/content/suppl/2013/03/05/dc12-2625.DC1/DC122625SupplementaryData.pdf 18

Am. Heart Ass'n, *Affordable Access to Health Care: Top Priorities of Heart Disease and Stroke Patients: Results from an American Heart Association Patient Survey* (2010), *available at* http://www.heart.org/idc/groups/heartpublic/@wcm/@global/documents/downloadable/ucm_314679.pdf 15, 17

TABLE OF AUTHORITIES—Continued

Page(s)

Am. Heart Ass'n, *FACTS: Breaking Down the Barriers: The Uninsured with Heart Disease and Stroke* (2013), *available at* http://www.heart.org/idc/groups/heartpublic/@wcm/@adv/documents/downloadable/ucm_304486.pdf 15

Andrew P. Wilper et al., *Health Insurance and Mortality in US Adults*, 99 Am. J. Pub. Health 1 (2009) 21

Anthony Robbins et al., *Insurance Status and Distant-Stage Disease at Diagnosis Among Adolescent and Young Adult Patients with Cancer Aged 15 to 39 Years: National Cancer Data Base*, 2004 Through 2010, 120 Cancer 1212 (2014) 16, 17

Anthony Robbins et al., *Insurance Status and Survival Disparities Among Nonelderly Rectal Cancer Patients in the National Cancer Data Base*, 116 Cancer 4178 (2010) 20

Brent M. Egan et al., *The Growing Gap in Hypertension Control Between Insured and Uninsured Adults: National Health and Nutrition Examination Surveys 1988-2010*, 8 J. Am. Soc'y Hypertension 7 (Supp. 2014) 20

Bruce Cohen et al., Neurology, *MS Therapy Adherence & Relapse Risk*, *available at* http://www.neurology.org/cgi/content/meeting_abstract/80/1_MeetingAbstracts/P01.193 21-22

TABLE OF AUTHORITIES—Continued

Page(s)

Ctr. for Disease Control & Prevention, *National Diabetes Fact Sheet 2014* (2014), *available at* http://www.cdc.gov//diabetes/pubs/statsreport14/national-diabetes-report-web.pdf. 9

Dariush Mozaffarian et al., *Heart Disease and Stroke Statistics—2015 Update: A Report from the American Heart Association* (2014), *available at* http://circ.ahajournals.org/content/early/2014/12/17/CIR.0000000000000152.full.pdf. 10, 21

David U. Himmelstein et al., *MarketWatch: Illness and Injury as Contributors to Bankruptcy*, W5 Health Aff. 63 (2005), *available at* http://content.healthaffairs.org/content/early/2005/02/02/hlthaff.w5.63.full.pdf 13

David U. Himmelstein et al., *Medical Bankruptcy in the United States, 2007: Results of a National Study*, 122 Am. J. Med. 741 (2009) 14

Edward W. Gregg et al., *Trends in Lifetime Risk and Years of Life Lost Due to Diabetes in the USA, 1985-2011: A Modelling Study*, Lancet Diabetes & Endocrinology (2014), *available at* http://www.thelancet.com/journals/landia/article/PIIS2213-8587(14)70161-5/fulltext#article_upsell 9

Elizabeth Ward et al., *Association of Insurance with Cancer Care Utilization and Outcomes*, 58 Cancer J. for Clinicians 9 (2008) 16, 19

TABLE OF AUTHORITIES—Continued

Page(s)

Elizabeth Ward et al., *The Association of Insurance and Stage at Diagnosis Among Patients Aged 55 to 74 Years in the National Cancer Database*, 16 Cancer J. 614 (2010) 19

Evan Saltzman & Christine Eibner, *The Effect of Eliminating the Affordable Care Act's Tax Credits in Federally Facilitated Marketplaces*, Rand Corporation (2015), *available at* http:// www.rand.org/pubs/ research_reports/RR980.html. 2

Institute of Medicine, National Academies, Insuring America's Health: Principles and Recommendations (2004) 16, 18

J.B. Fox et al., *Vital Signs: Health Insurance Coverage and Health Care Utilization—United States, 2006-2009 and January-March 2010*, 59 Morbidity & Mortality Wkly. Rep. 1448 (2010) 18

James P. Boyle et al., *Projection of the Year 2050 Burden of Diabetes in the US Adult Population: Dynamic Modeling of Incidence, Mortality, and Prediabetes Prevalence*, Population Health Metrics (Oct. 2010)..... 10

Jay J. Shen & Elmer Washington, *Disparities in Outcomes Among Patients with Stroke Associated with Insurance Status*, 38 Stroke 1010 (2007) 21

TABLE OF AUTHORITIES—Continued

Page(s)

Jeri Burtchell, *Should Multiple Sclerosis Drugs Cost $62,000 A Year?*, Healthline News (Jul. 19, 2013), *available* at http://www.health line.com/health-news/ms-why-are-ms-drug-prices-so-high-071913 14

John Reichard, *Oregon Votes to Switch Enrollment to Federal Health Insurance Exchange*, The Commonwealth Fund (Apr. 25, 2014), *available at* http://www.commonwealthfund.org/publications/newsletters/washington-health-policy-in-review/2014/apr/april-28-2014/oregon-votes-to-switch-to-federal-exchange 2-3

John T. Wilkins et al., *Lifetime Risk and Years Lived Free of Total Cardiovascular Disease*, 308 J. Am. Med. Ass'n 1795 (2012) 10

Kim G. Smolderen et al., *Health Care Insurance, Financial Concerns in Accessing Care, and Delays to Hospital Presentation in Acute Myocardial Infarction*, 303 J. Am. Med. Ass'n 1392 (2010) 17

L.I. Ionezzi & L. Ngo, *Health, Disability and Life Insurance Experiences of Working-Age Persons with Multiple Sclerosis*, Multiple Sclerosis 13:534 (May 2007)..... 14

TABLE OF AUTHORITIES—Continued

Page(s)

Linda J. Blumberg et al., *The Implications of a Supreme Court Finding for the Plaintiff in King vs. Burwell: 8.2 Million More Uninsured and 35% Higher Premiums*, Urban Institute (Jan. 2015), *available at* http://www.rwjf.org/en/research-publications/find-rwjf-research/2015/01/the-implications-of-a-supreme-court-finding-for-the-plaintiff-in.html?cq_ck=14207 39983087 2

Michael T. Halpern et al., *Insurance Status and Stage of Cancer at Diagnosis Among Women with Breast Cancer*, 110 Cancer 403 (2007) 20

Michelle Andrews, *Health Premiums and Costs Set to Rise for Workers Covered at Work*, NPR (Oct. 14, 2014 10:28 AM), *available at* http://www.npr.org/blogs/health/2014/10/14/356097499/health-premiums-and-costs-set-to-rise-for-workers-covered-at-work 7

MS Coalition, *The Use of Disease Modifying Therapies in MS: Principles and Current Evidence* (2014), *available at* http://www.nationalmssociety.org/getmedia/5ca284d3-fc7c-4ba5-b005-ab537d495c3c/DMT_Consensus_MS_Coalition_color 22

Nat'l Multiple Sclerosis Society, *MS Prevelance*, *available at* http://www.nationalmssociety.org/About-the-Society/MS-Prevalence 10

TABLE OF AUTHORITIES—Continued

Page(s)

Nina E. Flavin et al., *Health Insurance and the Development of Diabetic Complications*, 102 S. Med. J. 805 (2009) 21

O. Kedrik Duru et al., *Health Insurance Status and Hypertension Monitoring and Control in the United States*, 20 Am. J. Hypertension 348 (2007) 21

Sara R. Collins et al., *Insuring the Future: Current Trends in Health Coverage and the Effects of Implementing the Affordable Care Act: Findings from the Commonwealth Fund Biennial Health Insurance Survey, 2012*, The Commonwealth Fund (2013) 17

Scott Ramsey et al., *Washington State Cancer Patients Found to be at Greater Risk for Bankruptcy than People Without a Cancer Diagnosis*, Health Aff. (June 2013), *available at* http://content.healthaffairs.org/content/early/2013/05/14/hlthaff.2012.1263.full.pdf+html. 13

Shelly Banjo et al., *Wal-Mart to End Health Insurance for Some Part-Time Employees: Cutback to Affect 30,000 Who Work Fewer Than 30 Hours a Week*, Wall St. J. (Oct. 7, 2014 7:37 PM), *available at* http://online.wsj.com/articles/wal-mart-to-end-health-insurance-for-some-part-time-employees-1412694790 7

TABLE OF AUTHORITIES—Continued

Page(s)

Stacy A. Fedewa et al., *Association of Insurance Status and Age with Cervical Cancer Stage at Diagnosis: National Cancer Database, 2000-2007*, 102 Am. J. Pub. Health 1782 (2012) 19

Tefera Gezmu et al., *Disparities in Acute Stroke Severity, Outcomes, and Care Relative to Health Insurance Status*, 23 J. Stroke & Cerebrovascular Disease 93 (2014) 20

The George Washington University Center for Health Policy Research, Analysis of 2006-10 NHIS Data Conducted (Am. Heart Ass'n, Aug. 2011) (on file with the American Heart Association) 15

Veena Shankaran et al., *Risk Factors for Financial Hardship in Patients Receiving Adjuvant Chemotherapy for Colon Cancer: A Population-Based Exploratory Analysis*, 30 J. Clinical Oncology 1608 (2012) 13

Xuanping Zhang et al., *The Missed Patient with Diabetes: How Access to Health Care Affects the Detection of Diabetes*, 31 Diabetes Care 1748 (2008) 18

GLOSSARY

ACA or Act	Patient Protection and Affordable Care Act ("Affordable Care Act"), Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 11-152, 124 Stat. 1029
Amici	The parties filing this brief: American Cancer Society, American Cancer Society Cancer Action Network, American Diabetes Association, American Heart Association and National Multiple Sclerosis Society

INTEREST OF *AMICI* [1]

The American Cancer Society, American Cancer Society Cancer Action Network, American Diabetes Association, American Heart Association and National Multiple Sclerosis Society (collectively, "*Amici*") are the largest and most prominent nonpartisan organizations representing the interests of patients, survivors, and families affected by the widespread chronic conditions of cancer, diabetes, heart disease, stroke, and multiple sclerosis (MS), respectively. These conditions result in a significant portion of the nation's health care spending.

The fight against cancer, diabetes, heart disease, stroke, and MS requires access to affordable, quality health care and health insurance. *Amici* therefore strongly supported the nationwide availability of federal tax credits under the provisions of the Patient Protection and Affordable Care Act ("Affordable Care Act," "Act," or "ACA") during its consideration by Congress. We desire to assist the Court in understanding why those provisions of the Act are so important to millions of cancer, diabetes, heart disease, stroke, and MS patients and survivors, as well as their families.

Absent affordable health insurance, sufferers of the chronic diseases addressed by *Amici* have poorer health outcomes and require more costly care. In enacting the Affordable Care Act, Congress intended

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[1] Counsel for Petitioners and for Respondents have consented to the filing of this brief. *Amici* certify that this brief was authored in whole by counsel for *Amici* and no part of the brief was authored by any attorney for a party. No party, nor any other person or entity, made any monetary contribution to the preparation or submission of this brief.

to and did address these known problems. However, without the availability of tax credits to all eligible Americans (not just those who happen to purchase insurance from state-run Exchanges as Petitioners contend), the following impacts would result, as estimated by a Rand Corporation study released in early January 2015: (1) enrollment in the ACA-compliant individual insurance market in the 34 states with federally-facilitated Exchanges would decline by 9.6 million people, or 70 percent; and (2) unsubsidized premiums in the ACA-compliant individual insurance markets in those 34 states would increase by 47 percent. Evan Saltzman & Christine Eibner, *The Effect of Eliminating the Affordable Care Act's Tax Credits in Federally Facilitated Marketplaces*, Rand Corporation (2015), *available at* http://www.rand.org/pubs/research_reports/RR980.html.[2] As

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[2] A separate study also released in early January 2015 concluded that reversal of the Fourth Circuit's decision in this case would (1) increase by an estimated 8.2 million people the number of uninsured in the 34 states with federally-facilitated Exchanges, and (2) increase by an estimated 35% the average premiums in the nongroup insurance market in those 34 states. Linda J. Blumberg et al., *The Implications of a Supreme Court Finding for the Plaintiff in King vs. Burwell: 8.2 Million More Uninsured and 35% Higher Premiums*, Urban Institute (Jan. 2015), *available at* http://www.rwjf.org/en/research-publications/find-rwjf-research/2015/01/the-implications-of-a-supreme-court-finding-for-the-plaintiff-in.html?cq_ck=1420739983087. Even the estimates contained in the recent Rand Corporation and Urban Institute studies do not fully represent the scope of the potential impact. Some states are considering eliminating their state-run Exchanges, for reasons unrelated to this litigation, which would prevent even more individuals from receiving tax credits if the decision in this case were reversed. *See e.g.*, John Reichard, *Oregon Votes to Switch Enrollment to Federal Health Insurance Exchange*, The Commonwealth Fund (Apr. 25, 2014), *available at* http://www.commonwealthfund.org/publications/

discussed below, many of the millions of people who would be denied tax credits under the ACA, and who would thereby be unable to afford health care, suffer from the chronic diseases to which *Amici* focus their efforts.

The American Cancer Society is the nationwide, community-based voluntary health organization dedicated to eliminating cancer as a major health problem. With three million volunteers nationwide, the American Cancer Society's extensive scientific findings have established that health insurance status is strongly linked to medical outcomes. Cancer patients with adequate insurance coverage are more likely to be diagnosed at an earlier stage of disease resulting in lower medical costs, more thorough treatment, better outcomes, and lower rates of death. Accordingly, the American Cancer Society identified the lack of affordable health insurance as a major impediment to advancing the fight against cancer.

Along with its nonpartisan advocacy affiliate, the American Cancer Society Cancer Action Network, the American Cancer Society strongly advocates guaranteeing all Americans adequate, available, and affordable health care that is administratively simple. The American Cancer Society Cancer Action Network has nearly one million grassroots volunteers nationwide, including thousands who participated in efforts supporting enactment of the ACA. During consideration of the Act, the American Cancer Society Cancer Action Network was a source of scientific data

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newsletters/washington-health-policy-in-review/2014/apr/april-28-2014/oregon-votes-to-switch-to-federal-exchange (stating that Oregon has decided to close its state-run Exchange and that other states may follow suit).

for Congress and was the leading voice for cancer patients and their families seeking to make health insurance affordable for all Americans.

The American Diabetes Association is a nationwide, nonprofit, voluntary health organization founded in 1940 with over 400,000 members and approximately 14,000 health professional members. Its mission is to prevent and cure diabetes and to improve the lives of all people affected by diabetes. The American Diabetes Association is the most authoritative source for clinical practice recommendations, guidelines, and standards for the treatment of diabetes. As part of its mission, the American Diabetes Association works to improve access to high quality medical care and treatment for all people with, and at risk for, diabetes. In seeking to prevent diabetes, protect the rights of patients, and improve access to affordable and adequate insurance for people with diabetes, and based on clear evidence that lack of health insurance leads to increased risk of diabetes complications, the American Diabetes Association supported provisions in the Affordable Care Act that specifically impact all eligible people with diabetes, including the provisions making health care affordable.

The American Heart Association is the nation's oldest and largest voluntary health organization dedicated to fighting heart disease and stroke—the first and fifth leading causes of death in the United States. Since 1924, the American Heart Association and its more than 22 million volunteers and supporters have focused on reducing disability and death from cardiovascular disease and stroke through research, education, community-based programs, and advocacy.

The American Heart Association and its American Stroke Association division have set goals to improve the cardiovascular health of all Americans by 20 percent and to reduce cardiovascular disease and stroke mortality by 20 percent by 2020. Based on well-documented research that uninsured and under-insured Americans with heart disease and stroke experience higher mortality rates, poorer blood pressure control, greater neurological impairments and longer hospital stays after a stroke, the American Heart Association/American Stroke Association worked to represent the needs and interests of all eligible heart disease and stroke patients during the Congressional debates on health care reform and supported provisions of the Act making health care more affordable.

The National Multiple Sclerosis Society ("National MS Society") is a nationwide, nonprofit, voluntary health organization whose mission is to mobilize people and resources to drive research for a cure and to address the challenges of everyone affected by MS. Comprised of a collective of passionate individuals who want to do something about MS now, the National MS Society has more than 500,000 volunteers nationwide and 15,000 volunteer leaders. The National MS Society funds more MS research, and provides more programs for people with MS and their families, than any other voluntary health organization in the world. As part of its mission, the National MS Society adopted a comprehensive set of access to care principles for people living with MS. One of those principles is that people with MS have access to a comprehensive network of providers and healthcare services focused on producing the best outcomes at affordable costs. Accordingly, the National MS Society supports provisions in the Affordable Care Act

that make health insurance and healthcare more affordable and accessible for all eligible people with MS.

SUMMARY OF ARGUMENT

All Americans use or will use health care services, and the lifetime risks that individual Americans will acquire one of the diseases or conditions towards which *Amici* direct their efforts are high. Moreover, the costs of treating such serious conditions are often staggering and beyond the financial means of many individuals and families. The question is thus not *whether* individual Americans will incur health care expenses, but *how* those expenses will be financed. How care is financed, in turn, directly impacts access to vital health care services and the quality of health outcomes.

Amici were all actively involved in the legislative process leading to enactment of the Affordable Care Act in 2010. During that process, Congress was made aware of, and relied upon, data establishing that people have poorer health outcomes and require more costly, long-term, and invasive treatment without affordable health insurance.

The provisions of the Affordable Care Act making federal premium tax credits available to all eligible Americans with limited or no means to pay for health insurance are critical to increasing access to insurance and, by extension, to quality care and better outcomes for patients with chronic diseases and conditions. These key provisions were included in the Act by Congress in response to known failures in the health insurance market that left individuals—especially those affected by serious and chronic conditions such as cancer, diabetes, heart disease, stroke and MS—

without insurance and facing overwhelming costs and poor health outcomes. Congress corrected these failures in order to achieve its broader legislative goals of protecting patients and reducing costs by improving the availability, affordability, and quality of health insurance. Indeed, this Court has already recognized that the broad policy goals of the Act were "to increase the number of Americans covered by health insurance and decrease the cost of health care." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, — U.S. —, 132 S. Ct. 2566, 2580 (2012) ("NFIB") (Roberts, C.J.). The ACA's premium tax credit provisions will not accomplish what Congress intended without the availability of tax credits to **all** eligible Americans.[3]

Amici submit that the Fourth Circuit correctly held in *King v. Burwell*, 759 F.3d 358 (4th Cir. 2014), that if "the [ACA] is ambiguous and subject to at least two different interpretations" in connection with the availability of premium tax credits, then courts must give deference to the IRS Rule's "permissible construction" of the Act. *Id.* at 372, 376 (citing *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984)).

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[3] Critically, the Act's tax credits provide a safety net for individuals whose employers are eliminating health plans or who will not be able to afford employer-provided plans in the future. *See e.g.*, Michelle Andrews, *Health Premiums and Costs Set to Rise for Workers Covered at Work*, NPR (Oct. 14, 2014 10:28 AM), *available at* http://www.npr.org/blogs/health/2014/10/14/356097499/health-premiums-and-costs-set-to-rise-for-workers-covered-at-work; Shelly Banjo et al., *Wal-Mart to End Health Insurance for Some Part-Time Employees: Cutback to Affect 30,000 Who Work Fewer Than 30 Hours a Week*, Wall St. J. (Oct. 7, 2014 7:37 PM), *available at* http://online.wsj.com/articles/wal-mart-to-end-health-insurance-for-some-part-time-employees-1412694790.

After carefully reviewing the Act and the implementing IRS Rule, the Fourth Circuit accurately recognized that "denying tax credits to individuals shopping on federal Exchanges would throw a debilitating wrench into the Act's internal economic machinery," that "widely available tax credits are essential to fulfilling the Act's primary goals," and that the IRS Rule avoids the "unforeseen and undesirable consequence" that "Americans unable to purchase insurance without the credits would be forced to pay a penalty that Congress never envisioned imposing on them." *King*, 759 F.3d at 374-76. As the Fourth Circuit properly concluded:

> It is thus entirely sensible that the IRS would enact the regulations it did, making Chevron deference appropriate. Confronted with the Act's ambiguity, the IRS crafted a rule ensuring the credits' broad availability and furthering the goals of the law. In the face of this permissible construction, we must defer to the IRS Rule.

Id. at 375; *see also id.* at 376 (Davis, J., concurring) (explaining that the IRS Rule making tax credits available to all consumers is "the correct interpretation of the Act and is required as a matter of law").

ARGUMENT

I. ACCESS TO AFFORDABLE HEALTH CARE IS ESSENTIAL FOR MANAGING CHRONIC DISEASES

The need for health care is difficult to predict and practically inevitable at some point in life. *See NFIB*, 132 S. Ct. at 2610 (Ginsburg, J., concurring) ("Virtually every person residing in the United States, sooner or later, will visit a doctor or other health-care

professional.") (citing statistics); *see also id.* at 2585 (Roberts, C.J.) ("Everyone will eventually need health care at a time and to an extent they cannot predict.") Looking solely at the diseases that are the focus of *Amici*:

- One out of two men, and one out of three women, will develop some form of cancer in their lifetime, even excluding certain skin cancers and early-stage tumors. Am. Cancer Soc'y, *Cancer Facts and Figures 2015* 1 (2015), *available at* http://www.cancer.org/acs/groups/content/@editorial/documents/document/acspc-044552.pdf.
- Over 1.6 million Americans are expected to be diagnosed with cancer in 2015. *Id.*
- Currently, an estimated 29.1 million Americans have diabetes. Ctr. for Disease Control & Prevention, *National Diabetes Fact Sheet 2014* 1 (2014), *available at* http://www.cdc.gov/diabetes/pubs/statsreport14/national-diabetes-report-web.pdf.
- If present trends continue, 40 percent of all Americans and over 50 percent of Hispanic men, Hispanic women, and African American women will develop diabetes in their lifetime. Edward W. Gregg et al., *Trends in Lifetime Risk and Years of Life Lost Due to Diabetes in the USA, 1985-2011: A Modelling Study*, Lancet Diabetes & Endocrinology (2014), *available at* http://www.thelancet.com/journals/landia/article/PIIS2213-8587(14)7011-5/fulltext#article_upsell.
- By 2050, as many as one in three adult Americans are expected to have diabetes.

James P. Boyle et al., *Projection of the Year 2050 Burden of Diabetes in the US Adult Population: Dynamic Modeling of Incidence, Mortality, and Prediabetes Prevalence*, Population Health Metrics (Oct. 2010), at 1, 4.

- An estimated 85.6 million American adults (more than one in three) have one or more types of cardiovascular disease. Dariush Mozaffarian et al., *Heart Disease and Stroke Statistics—2015 Update: A Report from the American Heart Association* 128 (2014), *available at* http://circ.ahajournals.org/con tent/early/2014/12/17/CIR. 0000000000000152.full.pdf.
- The lifetime risk for developing cardiovascular disease among those starting free of known disease is almost two in three for men and greater than one in two for women (at 45 years of age). *Id.* at 129 (citing John T. Wilkins et al., *Lifetime Risk and Years Lived Free of Total Cardiovascular Disease*, 308 J. Am. Med. Ass'n 1795, 1798 (2012)).
- Although MS incidence and prevalence is not reported consistently, the most recent data from statistically-based estimates indicates that approximately 400,000 individuals in the US have the disease. Nat'l Multiple Sclerosis Society, *MS Prevelance*, *available at* http://www.nationalmssociety.org/About-the-Society/MS-Prevalence.

Combined, these statistics demonstrate the virtual certainty that all Americans will need health care at some point in their lives to combat these chronic diseases or myriad other health conditions that people

experience. Without affordable health insurance, patients and their families will continue to bear the burden of substantial health care costs, later stage diagnosis, and assume the risk of being denied the lifesaving care they need.

Good health and the chance for positive outcomes from illness must not be dependent upon a person's ability to pay for care. *Amici* abhor instances of patients who cannot afford to seek care when a cancer is at an early stage, foregoing potentially life-saving chemotherapy treatments, and left helpless as their condition worsens. We find it tragic when high costs force people with diabetes to delay treatment or skip taking needed medications for so long that they lose a limb due to amputation. We are frustrated by the reluctance of people experiencing heart attack symptoms to call 9-1-1 out of concern that they cannot afford a large medical bill, thereby depriving themselves of access to quick diagnosis and treatment in the Emergency Department that can mean the difference between life and death. We find it unconscionable when MS patients stop treatment due to the cost of disease modifying treatments, and consequently suffer more frequent and severe relapses, lose vital functions due to disability resulting from increased disease activity, and reduce their overall quality of life and life expectancy.

These natural, indeed nearly universal, human responses are why *Amici* have drawn hundreds of thousands of members and millions of volunteers and donors to efforts to help increase access to affordable and quality care for those with debilitating or life-threatening diseases. As nonpartisan organizations dedicated to addressing the devastating impact of these diseases, *Amici* know that access to affordable

basic, preventive health care and life-saving treatments are fundamental to successful health outcomes for all Americans.

II. CONGRESS KNEW THAT TAX CREDITS MUST BE AVAILABLE TO ALL ELIGIBLE AMERICANS SEEKING HEALTH INSURANCE TO MAKE HEALTH CARE AFFORDABLE AS CONGRESS INTENDED UNDER THE AFFORDABLE CARE ACT

The debates over health care reform and Congress's enactment of the Affordable Care Act were spurred by the failures of our health care system and the high costs of health insurance. These known failures hurt not only the nation's economic well-being, but also the health and well-being of individual Americans. For these and other reasons explained below, improving the health insurance system to make coverage more affordable was a primary Congressional focus. *See NFIB*, 132 S. Ct. at 2580. As the Fourth Circuit noted,

> With only sixteen state-run Exchanges currently in place, the economic framework supporting the Act would crumble if the credits were unavailable on federal Exchanges. Furthermore, without an exception to the individual mandate, millions more Americans unable to purchase insurance without the credits would be forced to pay a penalty that Congress never envisioned imposing on them. The IRS Rule avoids both these unforeseen and undesirable consequences and thereby advances the true purpose and means of the Act.

King, 759 F.3d at 375.

A. The Act addresses the problem of cancer, diabetes, heart disease, stroke, and MS patients and survivors who want and need health insurance but often cannot afford it

The cost of services to treat cancer, diabetes, heart disease, stroke, and MS can be beyond the reach of all but the wealthiest individuals absent some form of insurance. These chronic conditions have significant financial implications for patients, survivors, and their families.

One study found that 23 percent of colon cancer patients reported being in debt as a result of expenses related to cancer treatment, with an average debt of $26,860. Veena Shankaran et al., *Risk Factors for Financial Hardship in Patients Receiving Adjuvant Chemotherapy for Colon Cancer: A Population-Based Exploratory Analysis*, 30 J. Clinical Oncology 1608, 1610 (2012). More recently, a study published in 2013 found that cancer patients are more than two and a half times as likely to file for bankruptcy as people who do not have cancer. Scott Ramsey et al., *Washington State Cancer Patients Found to be at Greater Risk for Bankruptcy than People Without a Cancer Diagnosis*, Health Aff. (June 2013), at 5-6, *available at* http://content.healthaffairs.org/content/early/2013/05/14/hlthaff.2012.1263.full.pdf+html.

Similarly, the high cost of treating cardiovascular disease is a leading cause of medical bankruptcy. David U. Himmelstein et al., *MarketWatch: Illness and Injury as Contributors to Bankruptcy*, W5 Health Aff. 63, 69 (2005), *available at* http://content.healthaffairs.org/content/early/2005/02/02/hlthaff.w5.63.full.pdf. Among families with high levels of medical debt resulting in bankruptcy, those with stroke had

average out-of-pocket medical costs of $23,380 and those with heart disease had average medical costs of $21,955. David U. Himmelstein et al., *Medical Bankruptcy in the United States, 2007: Results of a National Study*, 122 Am. J. Med. 741, 745 (2009).

MS patients suffer a similar, oppressive burden. The cost of disease-modifying treatment is extremely high, averaging $62,000 per MS patient per year in 2013. Jeri Burtchell, *Should Multiple Sclerosis Drugs Cost $62,000 A Year?*, Healthline News (Jul. 19, 2013), *available* at http://www.healthline.com/health-news/ms-why-are-ms-drug-prices-so-high-071913. In a survey of MS patients, 27.4 percent had put off or postponed seeking the health care they needed because of the expense, and 22.3 percent delayed filling prescriptions, skipped doses of medications, or split pills because of costs. L.I. Ionezzi & L. Ngo, *Health, Disability and Life Insurance Experiences of Working-Age Persons with Multiple Sclerosis*, Multiple Sclerosis 13:534, 538 (May 2007). Similarly, 36 percent indicated spending less on such basic needs as food or heat in order to pay for health-related expenses. *Id.* at 544.

Health insurance is critical to helping finance these costs, yet patients with chronic illness often do not have such insurance. Before the ACA was enacted, one of every three people diagnosed with cancer under age 65 was uninsured or had been uninsured at some point since diagnosis. Am. Cancer Soc'y Cancer Action Network, *A National Poll: Facing Cancer in the Health Care System* 4 (2010), *available at* http://www.acscan.org/healthcare/cancerpoll. Of the cancer patients under 65 who reported being uninsured, 37 percent attributed their lack of health insurance to not being able to find an affordable plan. *Id.* at 11.

Likewise, approximately 7.3 million (or 15 percent of) adults who report having cardiovascular disease are uninsured, and nearly one of four cardiovascular disease patients and one of three stroke patients have gone without coverage at some point since their diagnosis. Am. Heart Ass'n, *FACTS: Breaking Down the Barriers: The Uninsured with Heart Disease and Stroke* (2013) (citing Analysis of 2006-10 NHIS Data Conducted by The George Washington University Center for Health Policy Research for the American Heart Association (Aug. 2011) (on file with the American Heart Association)), *available at* http://www.heart.org/idc/groups/heart-public/@wcm/@adv/documents/downloadable/ucm_304486.pdf); Am. Heart Ass'n, *Affordable Access to Health Care: Top Priorities of Heart Disease and Stroke Patients: Results from an American Heart Association Patient Survey* (2010), *available at* http://www.heart.org/idc/groups/heart-public/@wcm/@global/documents/downloadable/ucm_314679.pdf. More than half of the uninsured with cardiovascular disease cite cost as the reason they lack coverage. Am. Heart Ass'n, *FACTS*, *supra*.

B. Congress knew that, without affordable health insurance, people have poorer health outcomes and require more costly, invasive, and long-term treatment

As discussed herein, numerous studies and reports issued before and after Congress enacted the ACA establish that the lack of affordable health insurance has serious consequences for patients with and survivors of cancer, diabetes, heart disease, stroke and MS. Those studies and reports show that individuals without health insurance are less likely to receive preventive treatment or early detection screenings

and are more likely to delay treatment. *See, e.g.*, *NFIB*, 132 S. Ct. at 2611-12 (Ginsburg, J., concurring) ("Because those without insurance generally lack access to preventative care, they do not receive treatment for conditions—like hypertension and diabetes—that can be successfully and affordably treated if diagnosed early on. *See* Institute of Medicine, National Academies, Insuring America's Health: Principles and Recommendations 43 (2004).").

An American Cancer Society Cancer Action Network poll determined that, of individuals under age 65 who have cancer or a history of cancer, 34 percent reported delaying care because of cost in the preceding twelve months. Am. Cancer Soc'y Cancer Action Network, *A National Poll: Facing Cancer in the Health Care System* 17 (2010), *available at* http://www.acscan.org/healthcare/cancerpoll. More specifically, 29 percent delayed needed health care, 19 percent delayed getting a recommended cancer test or treatment, and 22 percent delayed a routine cancer check-up. *Id.* at 18.

At every level of education, individuals with health insurance are about twice as likely as those without it to have access to critical cancer early detection procedures, such as mammography or colorectal screenings. Elizabeth Ward et al., *Association of Insurance with Cancer Care Utilization and Outcomes*, 58 Cancer J. for Clinicians 9, 21 (2008). In addition, a study from February of 2014 showed that uninsured adolescents and young adults are at higher risk of advanced stage cancer diagnosis. *See* Anthony Robbins et al., *Insurance Status and Distant-Stage Disease at Diagnosis Among Adolescent and Young Adult Patients with Cancer Aged 15 to 39 Years: National Cancer Data Base, 2004 Through 2010*, 120

Cancer 1212 (2014). Specifically, uninsured females aged 15 to 39 were nearly twice as likely as those with private insurance to be diagnosed with cancer that has metastasized to distant parts of the body, referred to as "distant stage" cancer. *Id.* at 1214. Uninsured males in that age group were 1.5 times as likely as those with private insurance to be diagnosed with metastatic cancer. *Id.*

With respect to heart disease, an American Heart Association survey found that more than half of the cardiovascular patients responding reported difficulty paying for medical care. Am. Heart Ass'n, *Affordable Access to Health Care, supra*. Of those patients, 46 percent said they had delayed getting needed medical care, 43 percent had not filled a prescription, and 30 percent had delayed a screening test prior to diagnosis. *Id.* Fewer than half of uninsured adults had their cholesterol checked within the recommended timeframe. Sara R. Collins et al., *Insuring the Future: Current Trends in Health Coverage and the Effects of Implementing the Affordable Care Act: Findings from the Commonwealth Fund Biennial Health Insurance Survey, 2012*, The Commonwealth Fund 12 (2013). Even during a heart attack, studies show that uninsured patients are more likely to delay seeking medical care. Kim G. Smolderen et al., *Health Care Insurance, Financial Concerns in Accessing Care, and Delays to Hospital Presentation in Acute Myocardial Infarction*, 303 J. Am. Med. Ass'n 1392, 1395-99 (2010).

The same patterns occur with respect to uninsured individuals with diabetes. "Among persons aged 18 to 64 with diabetes mellitus, those who had no health insurance during the preceding year were six times as likely to forgo needed medical care as those who were

continuously insured." J.B. Fox et al., *Vital Signs: Health Insurance Coverage and Health Care Utilization—United States, 2006-2009 and January-March 2010*, 59 Morbidity & Mortality Wkly. Rep. 1448, 1448 (2010). Individuals with diabetes who have private health insurance see a doctor over four times as often as those who do not have insurance. Am. Diabetes Ass'n, *Economic Costs of Diabetes in the U.S. in 2012*, 36 Diabetes Care 1033, 7-9 tbls.9 & 10 (Supp. 2013), *available at* http://care.diabetesjournals.org/content/suppl/2013/03/05/dc12-2625.DC1/DC122625SupplementaryData.pdf. Those without insurance are more than 30 percent more likely to visit Emergency Departments than those with private insurance. *Id.*

Lack of health insurance also leads to cases of diabetes going undiagnosed, delaying the start of needed treatment and increasing the risks of complications. Among those with diabetes, 42.2 percent of individuals without health insurance were undiagnosed, compared with 25.9 percent for those with insurance. Xuanping Zhang et al., *The Missed Patient with Diabetes: How Access to Health Care Affects the Detection of Diabetes*, 31 Diabetes Care 1748, 1749 (2008).

Unfortunately, as a result of lack of preventive care and delayed treatment, uninsured patients have poorer health outcomes and require more costly long-term and invasive treatment than individuals with insurance. *See, e.g.*, *NFIB*, 132 S. Ct. at 2612 (Ginsburg, J., concurring) ("When sickness finally drives the uninsured to seek care, once treatable conditions have escalated into grave health problems, requiring more costly and extensive intervention.") (citing Institute of Medicine, *supra*, at 43-44). This

problem is illustrated by an extensive American Cancer Society study published in 2008 showing that uninsured Americans are less likely to get screened for cancer, more likely to be diagnosed with cancer at an advanced stage, and less likely to survive that diagnosis than their insured counterparts. *See* Elizabeth Ward et al., *Association of Insurance with Cancer Care Utilization and Outcomes*, 58 Cancer J. for Clinicians 9 (2008).

Insurance status impacts health outcomes for cancer patients at every level: they delay preventive screenings due to cost, the cancer is not discovered until it has developed to an advanced stage as a result, and those individuals who actually receive treatment are subject to more invasive and aggressive medical interventions. For example, aside from age, health insurance status was found to be the strongest predictor of cervical cancer stage at diagnosis. Stacy A. Fedewa et al., *Association of Insurance Status and Age with Cervical Cancer Stage at Diagnosis: National Cancer Database, 2000-2007*, 102 Am. J. Pub. Health 1782, 1784-85 (2012).

Similarly, in a study that included a cohort of nearly 850,000 patients with malignant tumors, uninsured patients were over four times more likely to be diagnosed with advanced-stage breast cancer and 1.4 times more likely to be diagnosed with advanced-stage cervical cancer than those with insurance. *Id.*; Elizabeth Ward et al., *The Association of Insurance and Stage at Diagnosis Among Patients Aged 55 to 74 Years in the National Cancer Database*, 16 Cancer J. 614, 619 (2010) (demonstrating that uninsured cancer patients under 65 have a 14.7 percent chance of being diagnosed with stage IV cancer, compared to a risk of

only 3.52 percent for those with private insurance in the same age group).

Further, cancer patients diagnosed at an advanced stage experience lower survival, more debilitating and invasive treatment, and greater long-term treatment-related morbidity, if they are treated at all. Michael T. Halpern et al., *Insurance Status and Stage of Cancer at Diagnosis Among Women with Breast Cancer*, 110 Cancer 403, 408 (2007). For example, uninsured patients diagnosed with stage IV colorectal cancer are almost four times as likely to receive no treatment for their cancer compared to patients with private insurance. Anthony Robbins et al., *Insurance Status and Survival Disparities Among Nonelderly Rectal Cancer Patients in the National Cancer Data Base*, 116 Cancer 4178, 4180 (2010).

Likewise, uninsured patients with cardiovascular disease experience higher mortality rates and poorer blood pressure control than their insured counterparts. *See* Tefera Gezmu et al., *Disparities in Acute Stroke Severity, Outcomes, and Care Relative to Health Insurance Status*, 23 J. Stroke & Cerebrovascular Disease 93, 95-97 (2014) (demonstrating that multiple factors lead to higher mortality rates for the uninsured including delaying seeking medical attention, lack of a regular primary care physician to monitor common risk factors, and lengthier hospital stays due to the inability to be transferred to a rehabilitation facility); Brent M. Egan et al., *The Growing Gap in Hypertension Control Between Insured and Uninsured Adults: National Health and Nutrition Examination Surveys 1988-2010*, 8 J. Am. Soc'y Hypertension 7, 7-8 (Supp. 2014) ("By 2010, hypertension was controlled in 29.8 percent of uninsured and 52.5 percent of insured adults...[a difference of] 22.7 percent");

Andrew P. Wilper et al., *Health Insurance and Mortality in US Adults*, 99 Am. J. Pub. Health 1, 4 (2009) (estimating that over 44,000 people died due to lack of health insurance); O. Kenrik Duru et al., *Health Insurance Status and Hypertension Monitoring and Control in the United States*, 20 Am. J. Hypertension 348, 350-52 (2007).

Similarly, those who suffer an ischemic stroke[4] and are uninsured experience greater neurological impairments, longer hospital stays, and up to a 56 percent higher risk of death than the insured. Jay J. Shen & Elmer Washington, *Disparities in Outcomes Among Patients with Stroke Associated with Insurance Status*, 38 Stroke 1010, 1013 (2007). Patients with no health insurance were also twice as likely to have a diabetic complication as patients with health insurance. Nina E. Flavin et al., *Health Insurance and the Development of Diabetic Complications*, 102 S. Med. J. 805, 807 (2009).

Early treatment is also critical for MS patients. Strong evidence suggests that disease-modifying treatment should be prescribed as soon as possible following a diagnosis of relapsing-remitting MS, and the treatment should be ongoing for benefits to persist. Stopping treatment has been shown to have a negative impact on an individual's MS, including an increase in the frequency and severity of relapses, or worsening MS symptoms. Bruce Cohen et al., Neurology, *MS Therapy Adherence & Relapse Risk*, *available at* http://www.neurology.org/cgi/content/meeting_abstra

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[4] Ischemic strokes account for 87 percent of all stroke incidents and are by far the most common type. Dariush Mozaffarian et al., *Heart Disease and Stroke Statistics—2015 Update: A Report from the American Heart Association*, *supra* at 140.

ct/80/1_MeetingAbstracts/P01.193. In addition, registry studies specific to MS and large population cohort studies of patients untreated with a disease-modifying therapy have demonstrated a reduction in survival of eight to 12 years. MS Coalition, *The Use of Disease Modifying Therapies in MS: Principles and Current Evidence* (2014), *available at* http://www.nationalmssociety.org/getmedia/5ca284d3-fc7c-4ba5-b005-ab537d495c3c/DMT_Consensus_MS_Coalition_color, at 5 & n.12, 15 & n.123. Similarly, the best chance for reducing long-term disability is during the early relapsing phase of MS. Early treatment is key, with the goal being to slow the accumulation of lesions, decrease the number of relapses, and prevent disease progression. *Id.* at 11 & n.50.

Access to health insurance could mean a person with MS gets a prompt diagnosis, and has access to early and ongoing treatment which might slow the progression of the disease and delay disability. Without health insurance to defray most of the costs of MS treatment, it is highly unlikely that most patients now living with the disease would be able to access their prescribed medicines, therapies, supportive services and equipment. Without treatment and therapy, the disabling consequences of MS would advance at their fastest pace, forcing patients out of the workforce and into lives of physical, financial and emotional dependence.

To address the known failures of the health insurance market and the tragic consequences those failures have for individuals, especially cancer, diabetes, heart disease, stroke, and MS patients and survivors, Congress provided federal premium tax credits to make health insurance affordable. By ensuring that health insurance is available to all

eligible individuals regardless of financial status, the Affordable Care Act protects all eligible patients, including those with chronic conditions, from the negative health and financial outcomes that accompany being uninsured or underinsured.

At no point in the legislative process did any of the *Amici* understand—or see evidence that any of the legislators or other participants in the drafting process intended—that the availability of tax credits and the resulting affordability of health insurance under the ACA would depend on whether a state chose to establish its own health insurance Exchange or have the federal government create an Exchange on the state's behalf. Had our organizations received any indication that this outcome was intended or even contemplated, we would have objected to any suggestion that the health and finances of patients with serious diseases should be made dependent upon the entity administering their state's Exchange. We would have objected even more strongly to any suggestion that patients' lives and health should be used as a bargaining chip to induce states to establish Exchanges themselves, rather than relying on the federal government. *Amici* did not make any such objections, because we saw no evidence that the issue ever arose during enactment of the ACA. *See, e.g.*, *King v. Sebelius*, 997 F. Supp. 2d 415, 431 (E.D. Va. 2014) ("What *is* clear is that there is no direct support in the legislative history of the ACA for [Petitioners'] theory that Congress intended to condition federal [tax credit] funds on state participation.") (emphasis by the court).

As discussed above, the ACA's premium tax credit provisions cannot accomplish what Congress intended without the availability of tax credits to all eligible

Americans. Without the tax credits provided by the Act, cancer, diabetes, heart disease, stroke, and MS patients and survivors who cannot not afford health insurance will continue to be plagued by the serious financial and health consequences associated with a lack of insurance.

CONCLUSION

For the foregoing reasons and those stated in Respondents' brief and the other *amicus* briefs filed in support of Respondents, *Amici* submit that the Fourth Circuit correctly held that, to the extent the ACA is ambiguous with respect to the availability of premium tax credits, *Chevron* deference must be given to the IRS Rule's permissible construction of the Act. *See King*, 759 F.3d at 372-76. Accordingly, the Fourth Circuit's decision upholding the government's summary judgment motion and denying Petitioners' cross-motion should be affirmed.

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